



INFORMATION SHEET

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Broadband content

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This information sheet is for people creating material for broadband delivery. We give a brief overview of relevant issues. For more detail, see our publication *Broadband content: a copyright guide*, which is available for sale from the Copyright Council.

For information about our other information sheets, publications and training program, see our website <http://www.copyright.org.au> or contact us (see contact details at the bottom of the page).

The purpose of this information sheet is to give general introductory information about copyright. If you need to know about how the law applies in a particular situation, please get advice from a lawyer.

A Copyright Council lawyer may be able to give you free legal advice about an issue not addressed in an information sheet. This service is primarily for professional creators and arts organisations but is also available to staff of educational institutions, governments and libraries. For further information about the service, see <http://www.copyright.org.au> (click the Advice button) or our information sheet *Australian Copyright Council: who we are, what we do*.

We update our information sheets from time to time. Check our website to make sure this is the most recent version.

Key points

In general terms, the main copyright issues you may need to consider are:

- whether you need a copyright or moral rights clearance to use other people's material as part of your content;
- what licensing arrangements you will enter into for the use of your content by broadband distributors; and
- how you or the broadband service provider will protect content against infringement.

What is broadband content?

Most people are familiar with the form of the internet that uses what is known as "narrowband" technology. "Narrowband" has an information transmission capability of less than 2Mbit/s and is most effective with text and images. "Broadband", on the other hand, has the capacity to carry much greater amounts of information, including sound, video, text and other data, and to allow interactivity with that content.

Two forms of content delivery that use broadband technology are broadband internet services and digital television. An interactive content industry is developing to meet the demand for material to distribute via these forms of delivery. Also, existing content is being re-purposed for broadband technology.

For more information about broadband, see the report *Broadband Media in Australia: Tales from the Frontier* (2001) by Marion Jacka, available from the Australian Film Commission's website, <http://www.afc.gov.au>.

Copyright law in Australia

In Australia, copyright law is contained in the *Copyright Act 1968* (Cth) and relevant court decisions that have interpreted and applied the Act.

For general information on background issues such as what types of material are protected by copyright, the rights of copyright owners, who owns copyright and how long copyright lasts, see the other information sheets available on our website, including *An introduction to copyright in Australia*, *Ownership of copyright* and *Duration of copyright*.

Infringement

Using copyright material in a way that is exclusively controlled by the copyright owner usually requires permission. Failure to get permission will usually result in an infringement of copyright. Using part of a work may also infringe copyright, if that part is important to the work – it does not need to be a large part. You may also infringe copyright if, for example, you authorise an infringement.

For more information, see our information sheets *Infringement: what can I do?* and *Infringement: actions, remedies, offences and penalties*.

There are some defences, or exceptions, to infringement that allow some uses of copyright material without permission – for example by reviewers and students. There are also special provisions for copying by libraries, educational institutions and government bodies. In some cases, certain procedures must be followed, and in some cases, fees must be paid.

For more information about these defences, see our information sheets *Fair dealing*, *Copying for research or study*, *Education institutions: introduction to copyright*, *Libraries (non-profit): introduction to copyright* and *Government and copyright*, and the more detailed practical guides designed for libraries, educational institutions and governments.

Assigning and licensing rights

Copyright owners can assign or license their rights.

Assigning rights means someone else becomes the owner; licensing means another person can use the copyright material. Assignments and licences can apply to all the rights in the material, or to just one or some of the rights. For example, an author may give an assignment or licence to adapt his or her work into a screenplay, but keep all other rights, such as book publication rights. In addition, a copyright owner may restrict an assignment or licence to particular countries or to a period of time, or both. A copyright owner may also include certain conditions, such as payment, in their agreement to assign or license rights.

Assignments and exclusive licences must be in writing and signed by or on behalf of the copyright owner to be fully effective. It is good business practice to put all transactions relating to copyright into writing, whether or not that is legally necessary.

For further introductory information, see our information sheet *Assigning and licensing rights*.

Moral rights

Individual creators have “moral rights” in what they create, whether or not they own copyright. These rights are the rights to:

- be attributed as the creator of their work;
- take action if their work is falsely attributed as being someone else’s work;
- take action if their work is distorted or treated in a way that is prejudicial to their honour or reputation.

However, a person who does not attribute a creator, or who treats a work in a derogatory way, does not infringe moral rights if:

- the person’s treatment of the work or failure to attribute was, in all the circumstances, “reasonable”; or
- the creator consented in writing to the person’s action or omission.

For further introductory information, see our information sheet *Moral rights*.

Performers’ rights

The Copyright Act also gives some narrow rights to performers.

Under the Act, people need to get consent from a performer to record or broadcast a live performance.

Consent may also be needed to use an unauthorised recording of a performance, or to use an authorised sound recording of a performance on a film soundtrack.

The amendments made to the Copyright Act under the Australia–US Free Trade Agreement give performers **part ownership of copyright in sound recordings** of their live performances. These rights came into force on 1 January 2005 and give performers the possibility of exercising some rights in relation to sound recordings on which their performances are recorded. As a result (unless there is an agreement to the contrary or the recording has been commissioned) the first owners of copyright in a sound recording of a live performance will be the performer and the person who owns the recording medium (the master, for example).

For further information, see our information sheet *Performers' rights*.

Do you need copyright clearances to create your content?

When you capture content in some material form, such as in a digital file, you are making a reproduction of that content. Making further copies of the file, or uploading or downloading it will also generally involve a reproduction. If that content includes copyright material owned by someone else, you will generally need a clearance to use it.

When you transmit copyright material via some form of broadband delivery service, such as over the internet or as digital television, you are, in copyright terms, “communicating” that material to the public. Therefore, in addition to clearance for reproductions, you will also generally need clearance to communicate that material.

You may already have content that has been created for you and that you want to re-purpose for broadband delivery. In this case, you will need to check that you either own copyright (for example, because it was created by an employee) or you have the right to use it for the relevant purpose (for example, if you commissioned the material, you should check the contract of commission to see what rights it grants).

In summary:

- if you entered into an agreement (such as a commissioning or licensing agreement) before 4 March 2001, you may need to get legal advice about whether you have the right to use the material in the context of broadband services (new copyright rights, including the right to make material available electronically, came into effect on that date);
- if you do not own copyright or otherwise have the right to use the material for broadband distribution, you will need to obtain the relevant permissions from the copyright owner/s;
- if you are commissioning new copyright material, you will need to make sure that the commissioning agreement gives you the rights to use the material in the ways you intend using it; and
- if you want to use pre-existing copyright material (such as text, images or film) in which copyright is owned by someone else, you will need to get permission and ensure that the permission you get “marries” with the uses you (and your licensees) want to make of that material.

In addition to securing copyright clearances, you will need to think about your moral rights obligations, and consider whether you can comply with any moral rights obligations or you whether you should get a moral rights consent from creators because whatever it is you want to do with their material might otherwise infringe their moral rights.

For further introductory information about getting permission, see our information sheets *Owners of copyright: how to find* and *Assigning & licensing rights*. For further introductory information on moral rights, see our information sheet *Moral rights*.

Licensing content

If you are entering into arrangements for the use of content via broadband services, you should ensure that appropriate agreements are in place with the organisations providing the services so that your rights and interests are adequately protected.

You may need to decide whether you will **assign** copyright in your content to the other party or only grant a *licence* for the use of your content. If the content you are selling or licensing incorporates other people's copyright material, it is important to ensure that you have gained the appropriate rights from the copyright owners, as discussed above. In other words, you need to marry up the rights you are granting with the rights you have been granted.

Other important issues include:

- payment arrangements (for example, whether you will sell or license your rights for a lump sum, for royalty payments or for a share of the profits);
- how long the agreement will last;
- the territory for which the rights are granted (in the case of the internet, worldwide rights would generally be granted, but in the case of digital television, rights may be granted on a territory-by-territory basis); and
- arrangements for the protection of the content against infringement.

For further introductory information, see our information sheet *Assigning & licensing rights*.

Copyright protection for content

You should note that there is no copyright for a broadband product **as a whole**. Rather, as with films and other multimedia, it is the component parts of the product that are protected: for example, the music; any script; any additional textual material; still images and graphics; and moving images such as film and animations.

Protecting content with technological “locks”

Copyright owners and those who deliver broadband content are exploring technological ways of protecting their material against copying and re-communication.

Provisions in the Australian Copyright Act generally allow owners of copyright and exclusive licensees of copyright material to take action against people who, for example, make, sell, import or rent devices that are used to circumvent technological protection measures or that allow encoded broadcasts to be decoded, or who provide circumvention services.

There are also criminal penalties for making, importing or commercially dealing in devices and services that circumvent technological copyright protection measures.

Rights management information

Another way in which unauthorised use of digital copyright material may be deterred is to embed electronic rights management information (ERMI) in it. ERMI can identify the material and its author or copyright owner, or can relate to the terms or conditions of use.

There are sanctions against tampering with ERMI, and against distributing or commercially dealing with material whose rights management information has been tampered with. Copyright owners and exclusive licensees can take action against people who do these things, and there are also criminal penalties for this type of activity.

Digital Rights Management (DRM) Guide

In May 2002 the Federal Government commissioned a consortium, including the Australian Interactive Multimedia Industry Association (AIMIA) and the law firm Gilbert + Tobin, to create the Digital Rights Management (DRM) Guide.

The purpose of the guide is to help digital content producers navigate copyright and other intellectual property issues relating to the licensing, protection and management of digital material. The guide contains “best practice” information on licensing, contracting, acquisition and management of material, and is available from <http://www.dcita.gov.au/drm>.

Further information

For further information about copyright, see our website – <http://www.copyright.org.au> or contact us.

Information from the Arts Law Centre of Australia may also be of interest to you: see <http://www.artslaw.com.au> or telephone (02) 9356 2566.

Reproducing this information sheet

You may download and print one copy of this information sheet from our website for your reference, or you may purchase a printed copy from our online shop – <http://shop.copyright.org.au> – or direct from us.

Australian Copyright Council

The Australian Copyright Council is a non-profit organisation whose objectives are to:

- assist creators and other copyright owners to exercise their rights effectively;
- raise awareness in the community about the importance of copyright;
- identify and research areas of copyright law which are inadequate or unfair;
- seek changes to law and practice to enhance the effectiveness and fairness of copyright;
- foster co-operation amongst bodies representing creators and owners of copyright.



The Australian Copyright Council has been assisted by the Commonwealth Government through the Australia Council, its arts funding and advisory body, through its Policy, Communication and Planning Division.

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